





Commercial Practices Working Group Acquisition Advisory Panel

These slides contain preliminary working group recommendations for discussion purposes only. They have not been approved by the Acquisition Advisory Panel.





Recommendation #1

-  Revise definition of “commercial item”
 -  Revise the definition of commercial item to only include items for which the commercial market establishes prices
 -  Clarify discretion of government agent to require information other than certified cost or pricing data for determination of fair & reasonable price
 -  Define “commercial services” separately from commercial item

Related Unresolved Issues #1

- ✍ Pricing of new products where they are commercial in nature but market forces have not yet established pricing or terms of offering
- ✍ Establishing price when the government is the predominant buyer and prior government contracts establish the “market” price
- ✍ Pricing complex commercial transactions (e.g., an aggregation of commercial items and commercial services with performance based objectives)
- ✍ “Commercial” divisions or sectors that sell only to the government

Recommendation #2

-  Define “commercial services” separately
 -  Distinguish among (i) performance-based services, (ii) services associated with installation, operation, or maintenance of commercial items, and (iii) consulting type services
 -  Require competition for the acquisition of commercial services under FAR Part 12
 -  Proceed under FAR Part 15 for non-competitive acquisition of services

Related Unresolved Issues #2

- ✍ Some vendors simply will not sell commercial services under Part 15
 - ✍ Solution: Expand government authority to require information other than certified cost of pricing data, e.g., direct labor rates, overhead, and profit, *etc.*?
- ✍ Government audit rights in disclosure of information other than cost or pricing data
- ✍ Remedy for inaccurate disclosure

Other Recommendations

- ✍ Standardize basic contract terms for Part 12 contracts rather than relying on each vendor's proposed terms (e.g., payment, termination, remedies for breach, warranties, acceptance, etc.)
- ✍ Provide statutory authority for indemnification of contractor for third party claims arising out of government use of commercial item or service
- ✍ Require TINA data for noncommercial modifications of commercial items (the greater of \$500k or 5% of item value)
- ✍ Reaffirm benefits of and preference for competition